INTRODUCTION

The Subcommittee on Health of the Senate Committee on Finance has scheduled a public hearing, to be held on September 9, 1985, on S. 1265, sponsored by Senators Armstrong, Pell, Inouye, Long, and Boren.[1] This bill, the "Asbestos Workers' Recovery Act," would establish an Asbestos-Related Disease Trust Fund, to be financed primarily by assessments on defendants in asbestos liability cases, their insurers, and the Federal Government, to compensate workers injured by occupational exposure to asbestos.

This document,[2] prepared by the staff of the Joint Committee on Taxation, summarizes present law and the principal provisions of the bill.

---

[1] In introducing the bill, Sen. Armstrong stated that it had been "written jointly by many asbestos manufacturing companies," and that he was introducing the bill for discussion purposes. 131 Cong. Rec. S7714 (daily ed. June 7, 1985).

[2] This document may be cited as follows: Joint Committee on Taxation, Description of S. 1265 Relating to Proposed Asbestos-Related Disease Trust Fund (JCX-14-85), September 6, 1985.

DESCRIPTION OF THE BILL

Background

Under present law, claims for damages brought by individuals who were exposed to asbestos during work have generally been pursued through the courts. Damage claims based on the consequences of asbestos exposure generally involve lung diseases, including asbestosis and cancer, which in some cases may take more than 20 years to be manifested, and which may result in disability or death.

It has been estimated that more than 20,000 asbestos liability cases are pending in State and Federal courts and that the parties have incurred about $1 billion in expenses on such cases, much of it for legal fees and costs. One former asbestos producer filed for bankruptcy reorganization in 1982 at a time when 16,500 asbestos-related lawsuits were pending against it, in which more than $12 billion in damages were claimed.[3]

Present Law

Present law does not utilize the tax system to establish a specific mechanism for compensating individuals injured by occupational exposure to asbestos.

In the case of individuals who have been totally disabled by pneumoconiosis (black lung disease), present law finances certain benefits to the coal miners (or their survivors), in cases where no specific coal operator is found responsible for the injury, through an excise tax on coal. Revenues from the coal tax are transferred to the Black Lung Disability Trust Fund, established pursuant to the Black Lung Benefits Revenue Act of 1977. The trust fund pays black lung medical and rehabilitation benefits as well as monthly cash support payments, which vary according to the number of dependents in the miner's family, out of such tax revenues (and repayable advances from the general revenues.[4]

---

[3] See, generally, N.Y. Times, Aug. 3, 1985, at 1, col. 6; Wall Street Journal, June 21, 1985, at 6, col. 5; 131 Cong. Rec. S7714 (daily ed. June 7, 1985) (statement of Sen. Armstrong).

[4] The present-law Superfund program targets specific taxes for the payment of remedial and other costs (e.g., cleanup of abandoned hazardous waste sites) when no specific party is individually liable for such costs. The costs financed

(Footnote continued)

Explanation of Provisions

Establishment of trust fund

The bill (S. 1265) would establish a new trust fund in the Treasury, the Asbestos-Related Disease Trust Fund, to compensate individuals suffering disease, disability, or death attributable to occupational exposure to asbestos. Except for workers' compensation claims, payments from this trust fund would constitute the exclusive remedy for pending cases and future claims resulting from occupational asbestos exposure.

Financing of trust fund

The Asbestos-Related Disease Trust Fund would be financed through assessments imposed on suppliers of asbestos or asbestos-containing products which are defendants in asbestos-related disease litigation filed between 1960 and 1982 (plus other suppliers listed by the Secretary of the Treasury as additional defendants), on these defendants' insurers under asbestos insurance policies, and on the United States (i.e., the Federal Government).

One-half of the aggregate assessments would be paid by the United States, based upon its asserted responsibility for asbestos exposure as a result of naval construction activities during World War II, the Korean War, and thereafter. The remaining assessment amount would be allocated among the original asbestos defendants (i.e., the 1960 though 1982 defendants) according to an agreement to be negotiated by the defendants themselves and submitted to the Secretary of the Treasury. These allocations would be adjusted upon the addition of further defendants.

The bill would set aggregate semi-annual assessments of $150 million for each of the first two years. For later years, aggregate assessments would be determined according to a formula intended to maintain the fund at a level necessary to pay claims for which the fund is liable (as described below). Repayable advances to the trust fund from general revenues would be authorized under specified conditions.

The assessment against any individual defendant would be reduced by the amount of prior asbestos-related recoveries against that defendant and by amounts assessed against the defendant's asbestos insurers. Assessments against insurers would be allocated proportionately among multiple insurers,

---

[4](continued)
through such taxes do not include medical benefits to individuals injured by hazardous wastes.

and would be limited to the outstanding value of each policy. Special rules would be provided for defendants in bankruptcy proceedings, including rules for the acceleration of future obligations in specified circumstances.

Treatment of assessments as taxes

The bill specifies that assessments for the Asbestos-Related Disease Trust Fund would be treated as excise taxes for purposes of the Internal Revenue Code. Thus, the Internal Revenue Service presumably would administer the assessment provisions of the bill and collect the assessment amounts pursuant to the general excise tax administrative rules of the Code.

Expenditures from trust fund

Amounts in the trust fund would be made available to pay benefits to individuals in respect of disability or death caused by occupational exposure to asbestos. Benefits would be paid to the affected individuals or their survivors on an interim basis (while a claim remained subject to further review) or in the form of lump-sum payments. The maximum total payment for any individual would be 92 times the average weekly wage for manufacturing workers in the relevant State at the time of the award, as determined by the Secretary of Labor in consultation with the Secretary of Health and Human Services. This amount would be reduced for partial disabilities, or when death or disability resulted only in part from asbestos exposure.

The bill provides that benefits paid from the trust fund would be excludable from income for Federal income tax purposes. Benefits would not reduce (or be reduced by) other workers' compensation, unemployment compensation, disability insurance, or other similar benefit payments; however, benefits would be reduced by prior recoveries in asbestos-related legal actions. Benefits provided by the bill would be payable only out of the trust fund.

The claims procedure would be administered by the Department of Health and Human Services, using procedures similar to those used for reviews of disability claims under the Social Security Act, or by delegated State authorities. Claimants would generally be required to apply first for regular workers' compensation, and factual determinations (e.g., whether a person is disabled, and whether and to what extent disability resulted from asbestos exposure) would be made by workers' compensation programs whenever possible. A National Medical Panel would be established to decide which diseases should be included on a general list of asbestos-related diseases, and to determine whether specific diseases can be caused by asbestos.

Under the bill, claims against the trust fund would constitute an exclusive remedy for occupational exposure to asbestos (except for workers' compensation claims). Thus, asbestos defendants and insurers, other sellers or distributors of asbestos (or products containing asbestos), and their employees, agents, and shareholders, would be immune from liability with respect to all related actions pending on the effective date of the bill or commenced thereafter. The bill provides that no Federal or State court or administrative agency would have jurisdiction over any claim of liability for occupational exposure to asbestos. Claimants in pending cases would have up to two years in which to file claims against the trust fund.

The bill includes a provision under which the entire legislation would be nullified if the bill itself were found unconstitutional or if specified major elements of the bill (such as the mechanisms for allocating assessments among the asbestos defendants, or providing benefits to claimants) were held invalid. However, once full payment of a claim were made, that claimant would be prohibited from seeking any other remedy, even if the entire bill were nullified. The entire legislation also would be nullified if the Trust Fund exhausts its funds.

The bill would establish a new, three-judge district court in the U.S. District Court for the District of Columbia. This new court alone would have jurisdiction to hear cases challenging the constitutionality of the bill or the allocation of assessments among the asbestos defendants. Also, this court would be empowered to stay or enjoin any proceeding in any State or Federal court (other than the U.S. Supreme Court) if that proceeding were to interfere with an order of the new court.

In addition to benefit payments, monies in the trust fund would be available to fund certain research, training, and evaluation projects (not to exceed 0.50 percent of the amount spent on benefits), and for administrative expenses.

Management of trust fund

The Asbestos-Related Disease Trust Fund would be managed by the Secretary of the Treasury or the Secretary's designee (the "managing trustee"), who would report annually to Congress on the condition of the fund. A six-member committee, consisting of the managing trustee and of representatives of asbestos defendants, insurers, claimants, employees, and State workers' compensation programs, would oversee operation of the trust fund.

Effective Date

The bill generally would be effective on the date of enactment.